

REMARKS

In response to the Office Action mailed September 2, 2008, the Applicant respectfully requests that the Examiner enter the above amendments and consider the following remarks. Claims 1-3, 5-16, and 18-22 have been amended to more clearly describe exemplary embodiments of the invention and remain pending in the application. The Applicant respectfully requests further examination and reconsideration of the application in light of the amendments and accompanying remarks.

Rejection Claims 1-3, 5-16 and 18-22 Under 35 U.S.C. §112

The Examiner has rejected Applicant's Claims 1-3, 5-16 and 18-22 under 35 U.S.C. 112, first paragraph, asserting that Applicant fails to comply with the written description requirement by claiming subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention.

As seen in Figure 3 and described in at least paragraph [0017], the specification clearly contains disclosure pertaining to a railing "assembly" that includes components (post, plank, and rail) and fasteners. The specification provides that the assembly 20, includes a post 22, a plank 24, and rail 26 with a perforated steel sheet. Additionally, fasteners 30 and 32 may extend through the plank 24 and into the rail 26 to preferably engage the substrate 28.

Likewise, paragraph [0017] clearly contains language pertaining to a “rail component.” As mentioned above, the specification provides that the assembly 20 includes a post 22, a plank 24, and rail 26. Further, any of these “components” may be made according to the present invention.

Even though Applicant believes that the system language contained in the previous claim language was proper, in order to clarify the intended subject matter of the present claims, the Applicant has amended Claims 1-3, 5-16, and 18-22 by using language expressly stated in the specification to more clearly describe the subject matter recited therein. As a result of these amendments, Applicant believes it is now clear that a rail assembly that includes a rail component is being claimed. Consequently, it is respectfully submitted that the Examiner’s rejection under 35 U.S.C. 112, first paragraph is now moot.

The Examiner has rejected Applicant’s Claims 1-3, 5-16 and 18-22 under 35 U.S.C. 112, second paragraph, asserting that the Claims are indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Examiner asserts that the term “rail system” is unclear and renders Claims 1-3, 5-16 and 18-22 vague and indefinite, and likewise the term “rail component” is unclear and renders Claims 1, 9 and 14 vague and indefinite.

As mentioned in above argument, the Applicant believes that the terms “rail assembly” and “rail component” are definite from the express language contained in at

least paragraph [0017] of the specification. Consequently, it is respectfully submitted that the Examiner's rejection under 35 U.S.C. 112, second paragraph is now moot.

Rejection of Claims 1-3, 5-16, and 18-22 Under 35 U.S.C. § 102(b)

The Examiner rejected claims 1-3, 5-16, and 18-22 under 35 U.S.C. § 102(b) as being anticipated by Nakao (US 5,443,887). Applicant has amended claims 1-3, 5-16, and 18-22 to more clearly describe the subject matter recited therein. As Applicant does not believe Nakao to teach the subject matter of the rejected claims, the rejection is respectfully traversed.

The Applicant has amended the claims in order to more clearly describe exemplary embodiments of a rail assembly comprising a post, a rail component and a plank. Nakao, on the other hand, is directed to a composition for gaskets. Even if, arguendo, the two components of the gasket in Nakao and the rail component of present application are considered equivalent, other claimed features of the present invention are still missing from Nakao. Most notably, Applicant submits that Nakao in no way teaches or even suggests a rail assembly that includes a post, a rail component and a plank disclosed in the present invention. Therefore, the Applicant respectfully submits that Nakao cannot support the rejection of claims 1-3, 5-16, and 18-22 under 35 U.S.C. § 102(b).

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Conclusion

Applicant has amended claims 1-3, 5-16 and 18-22. Applicant has also distinguished the subject matter of the present invention over the teachings of the references cited as prior art by the Examiner.

Therefore, Applicant respectfully submits that the present application is now in condition for allowance, and such action is earnestly requested. Telephone inquiry to the undersigned in order to clarify or otherwise expedite prosecution of the present application is respectfully encouraged.

Respectfully submitted,

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